

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1010**

FINAL READING

Introduced by Pankonin, 2; Haar, 21.

Read first time January 20, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to natural resources districts; to amend  
2 section 2-3234, Revised Statutes Supplement, 2009; to  
3 provide procedures for the use of eminent domain for  
4 trails; to provide a duty for the Revisor of Statutes; to  
5 harmonize provisions; to repeal the original section; and  
6 to declare an emergency.

7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act are procedures for  
2 the use of eminent domain by a natural resources district to take  
3 private real property for a trail.

4           Sec. 2. For purposes of sections 1 to 8 of this act:

5           (1) District means a natural resources district;

6           (2) Private real property does not include any public  
7 land such as real property under the general management of the  
8 Board of Educational Lands and Funds;

9           (3) Supermajority means sixty-seven percent or more; and

10           (4) Trail means a thoroughfare or track across real  
11 property used for recreational purposes.

12           Sec. 3. Before establishing a trail, the district shall  
13 consider, at a public hearing, all of the following:

14           (1) The proposed route for the trail, including maps and  
15 illustrations, and the mode of travel to be permitted;

16           (2) The areas adjacent to such route to be utilized  
17 by the district for scenic, historic, natural, cultural, or  
18 developmental purposes;

19           (3) The characteristics that make the proposed route  
20 suitable as a trail;

21           (4) The plans for developing, operating, and maintaining  
22 the proposed trail;

23           (5) Any anticipated problems enforcing the proper use of  
24 the proposed trail or hazards to private real property adjacent to  
25 such trail;

1           (6) The current status of the real property ownership and  
2 current and potential use of the real property in and along the  
3 proposed route;

4           (7) The estimated cost of acquisition of the real  
5 property, or an interest therein, needed for the proposed route;  
6 and

7           (8) The extent and type of private real property  
8 interest needed to establish the proposed trail, the right-of-way  
9 acquisition process to be followed, and the circumstances under  
10 which eminent domain may be utilized.

11           Sec. 4. If the district decides to establish the trail  
12 after following the procedure under section 3 of this act, the  
13 district may acquire private real property, or an interest therein,  
14 to develop and maintain the trail by:

15           (1) Seeking to secure the written consent of the  
16 private real property owners affected by the trail to enter  
17 into negotiations and proceeding in good faith to reach negotiated  
18 agreements with such owners for the private real property, or an  
19 interest therein needed; or

20           (2) If all reasonable efforts to secure written consent  
21 and negotiated agreements to acquire private real property, or  
22 an interest therein, have failed, the district board may, by  
23 resolution adopted by a supermajority of the district board at a  
24 public meeting, elect to conduct a proceeding to determine whether  
25 to use the power of eminent domain to acquire such property. Such

1 proceeding shall be a public hearing with general notice to the  
2 public and specific notice by registered mail to all private real  
3 property owners whose property would be subject to condemnation  
4 by eminent domain. The public hearing shall be held no sooner  
5 than forty-five days after the date the resolution is adopted.  
6 At the public hearing, the district board shall receive evidence  
7 on the question of whether to acquire private real property by  
8 eminent domain for the purpose of constructing the trail. The  
9 district board may, by vote of a supermajority of its members,  
10 elect to proceed with eminent domain to acquire such property if  
11 the district board finds, by clear and convincing evidence received  
12 at the public hearing, that all of the following criteria are met:

13 (a) Whether the trail has been publicized at a public  
14 hearing held in accordance with section 3 of this act in the area  
15 where the trail is planned and reasonable notice of the hearing was  
16 provided to affected private real property owners;

17 (b) Whether good faith attempts to negotiate agreements  
18 meeting the requirements of subdivision (1) of this section with  
19 the affected private real property owners have been made and have  
20 failed for some or all of the private real property that is  
21 determined by the district board to be necessary for the trail to  
22 be developed;

23 (c) Whether all other trail route alternatives have been  
24 considered, with an evaluation of the extent to which private real  
25 property may be involved and which may require the exercise of

1 eminent domain for each alternate route;

2 (d) Whether in locating the proposed trail consideration  
3 was given to the directness of the route; potential benefit to  
4 communities and public facilities adjacent to the trail route;  
5 trail design and costs; safety to trail users, vehicle operators,  
6 and adjacent persons; and adverse impacts and intrusions upon  
7 private real property owners or persons using such property;

8 (e) Whether good faith attempts have been made to  
9 address the concerns of affected private real property owners  
10 regarding trail design, privacy, land protection, management, and  
11 maintenance; and

12 (f) Whether any development and management of the trail  
13 is designed to harmonize with and complement any established forest  
14 or agricultural plan for the affected private real property.

15 Sec. 5. When the acquisition of a parcel of private real  
16 property, or an interest therein, for a trail divides the private  
17 real property in such a manner that the owner has no reasonable  
18 access to one part of the divided parcel, the district shall allow  
19 reasonable access across the trail at a location mutually agreed  
20 upon by the owner of such divided parcel and the district.

21 Sec. 6. Acquisition of private real property, or an  
22 interest therein, and any utilization of eminent domain approved  
23 under sections 1 to 8 of this act to establish a proposed trail  
24 shall be conducted in the manner and subject to the requirements  
25 provided in sections 25-2501 to 25-2506 and 76-701 to 76-726.

1           Sec. 7. (1) A private real property owner or lessee  
2 of property adjoining a trail has no duty (a) to maintain or  
3 repair the trail or (b) to protect users of the trail from danger  
4 resulting from conditions on the trail unless such conditions are  
5 the result of an intentional or negligent act of such owner or  
6 lessee.

7           (2) A negotiated written agreement between a district and  
8 a private real property owner regarding the acquisition of real  
9 property, or an interest therein, by the district to establish and  
10 maintain a trail shall clearly express both parties' rights and  
11 obligations, including the obligation of the district to maintain  
12 the trail and the liability of the district for property damage or  
13 personal injury, or both, to users of the trail.

14           Sec. 8. An affected private real property owner may  
15 appeal the decision of the district board to use eminent domain  
16 under sections 1 to 8 of this act by petition in error to the  
17 district court of the county where the affected private real  
18 property is located. No petition to condemn private real property  
19 affected by the proposed trail shall be filed in county court until  
20 any error proceeding under this section is final.

21           Sec. 9. Section 2-3234, Revised Statutes Supplement,  
22 2009, is amended to read:

23           2-3234 Except as provided in section 2-3226.11 and  
24 sections 1 to 8 of this act, each district shall have the  
25 power and authority to exercise the power of eminent domain when

1 necessary to carry out its authorized purposes within the limits  
2 of the district or outside its boundaries. Exercise of eminent  
3 domain shall be governed by the provisions of sections 76-704 to  
4 76-724, except that whenever any district seeks to acquire the  
5 right to interfere with the use of any water being used for power  
6 purposes in accordance with sections 46-204, 70-668, 70-669, and  
7 70-672 and is unable to agree with the user of such water upon  
8 the compensation to be paid for such interference, the procedure  
9 to condemn property shall be followed in the manner set forth in  
10 sections 76-704 to 76-724 and no other property shall be included  
11 in such condemnation. No district shall contract for delivery of  
12 water to persons within the corporate limits of any village, city,  
13 or metropolitan utilities district, nor in competition therewith  
14 outside such corporate limits, except by consent of and written  
15 agreement with the governing body of such political subdivision.  
16 A village, city, or metropolitan utilities district may negotiate  
17 and, if necessary, exercise the power of eminent domain for the  
18 acquisition of water supply facilities of the district which are  
19 within its boundaries.

20           Sec. 10. The Revisor of Statutes shall assign sections 1  
21 to 8 of this act within Chapter 2, article 32.

22           Sec. 11. Original section 2-3234, Revised Statutes  
23 Supplement, 2009, is repealed.

24           Sec. 12. Since an emergency exists, this act takes effect  
25 when passed and approved according to law.